

Welsh Statutory Instrument 2004 No. 1656 (W.170)

The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004

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2004 No. 1656 (W.170)

ENVIRONMENTAL PROTECTION, WALES

The Environmental Assessment of Plans and Programmes (Wales)
Regulations 2004

Made

29 June 2004

Coming into force

12 July 2004

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The National Assembly for Wales, being designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] in relation to matters relating to the assessment of the effects of certain plans and programmes on the environment, in exercise of the powers conferred by the said section 2 and of all other powers enabling it in that behalf, hereby makes the following Regulations:

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

1. These Regulations may be cited as the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 and come into force on 12 July 2004.

Interpretation

2. - (1) In these Regulations -

"Cadw" ("*Cadw*") means the executive agency responsible for administering the exercise of functions vested in the National Assembly relating to the historic environment;

"consultation body" ("*corff ymgynghori*") has the meaning given by regulation 4;

"the Environmental Assessment of Plans and Programmes Directive" ("*Cyfarwydddeb Asesiad Amgylcheddol o Gynlluniau a Rhaglenni*") means Directive 2001/42/EC[3] of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment;

"functions" ("*swyddogaethau*") includes powers and duties;

"the Habitats Directive" ("*y Gyfarwydddeb Cynefinoedd*") means Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna, as last amended by Council Directive 97/62/EC[4];

"the National Assembly" ("*y Cynulliad Cenedlaethol*") means the National Assembly for Wales;

references to "plans" ("*cynlluniau*") and "programmes" ("*rhaglenni*") are references to plans and programmes, including those co-financed by the European Community, as well as any modifications to them, which are -

(a) subject to preparation or adoption, or both, by an authority at national, regional or local level; or

(b) prepared by an authority for adoption, through a legislative procedure by Parliament or Government; and, in either case,

(c) required by legislative, regulatory or administrative provisions;

"responsible authority", ("*awdurdod cyfrifol*") in relation to a plan or programme, means -

(a) the authority by which or on whose behalf it is prepared; and

(b) where, at any particular time, that authority ceases to be responsible, or solely responsible, for taking steps in relation to the plan or programme, the person who, at that time, is responsible (solely or jointly with the authority) for taking those steps; and

"Secretary of State" ("*Ysgrifennydd Gwladol*") means the Secretary of State having responsibility for the subject matter of the plan or programme.

(2) Other expressions used both in these Regulations and in the Environmental Assessment of Plans and Programmes Directive have the same meaning in these Regulations as they have in that Directive.

(3) In these Regulations, unless otherwise stated, references to Parts, regulations and Schedules are references to Parts, regulations and Schedules of these Regulations.

Application

3. - (1) These Regulations apply to a plan or programme relating solely to the whole or any part of Wales.

(2) For the purposes of these Regulations, "Wales" has the meaning given by section 155 of the Government of Wales Act 1998 and any orders under paragraph (2) of that section^[5].

(3) For the purposes of this regulation, the territorial waters of the United Kingdom adjacent to Wales are to be treated as part of Wales; and references to Wales are to be construed as including the adjacent territorial waters.

(4) For the purposes of paragraph (3), territorial waters include any waters landward of the baselines from which the breadth of the territorial sea is measured.

Consultation bodies

4. - (1) Subject to paragraph (2), in relation to every plan or programme to which these Regulations apply, each of the following bodies are consultation bodies -

- (a) the Countryside Council for Wales;
- (b) the Environment Agency; and
- (c) Cadw.

(2) Where a body mentioned in paragraph (1) is at any time the responsible authority as regards a plan or programme, it must not at that time exercise the functions under these Regulations of a consultation body in relation to that plan or programme; and references to the consultation bodies in the following provisions of these Regulations are to be construed accordingly.

PART 2

ENVIRONMENTAL ASSESSMENT OF PLANS AND PROGRAMMES

Environmental assessment of plans and programmes: first formal preparatory act after 21 July 2004

5. - (1) Subject to paragraphs (5) and (6) and regulation 7, where -

- (a) the first formal preparatory act of a plan or programme occurs after 21 July 2004; and
- (b) the plan or programme is of the description set out in paragraph (2) or (3),

the responsible authority must carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3 of these Regulations, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.

(2) The description is a plan or programme which -

- (a) is prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use; and
- (b) sets the framework for future development consent of projects listed in Annex I or II to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC^[6].

(3) The description is a plan or programme which, in view of the likely effect on sites, has been determined to require an assessment pursuant to Article 6 or 7 of the Habitats Directive.

(4) Subject to paragraph (5) and regulation 7, where the -

- (a) first formal preparatory act of a plan or programme, other than a plan or programme of the description set out in paragraph (2) or (3), occurs after 21 July 2004;
- (b) plan or programme sets the framework for future development consent of projects; and
- (c) plan or programme is the subject of a determination under regulation 9(1), or a direction under regulation 10(3), that it is likely to have significant environmental effects,

the responsible authority must carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure leading to adoption.

(5) Nothing in paragraph (1) or (4) requires the carrying out of an environmental assessment for a -

- (a) plan or programme, the sole purpose of which relates to national defence or civil emergency;

(b) financial or budget plan or programme; or

(c) plan or programme co-financed under -

(i) the 2000-2006 programming period for Council Regulation (EC) No. 1260/1999; or

(ii) the 2000-2006 or 2000-2007 programming period for Council Regulation (EC) No. 1257/1999.

(6) An environmental assessment need not be carried out for a -

(a) plan or programme of the description set out in paragraph (2) or (3) which determines the use of a small area at local level; or

(b) minor modification to a plan or programme of the description set out in either of those paragraphs,

unless it has been determined under regulation 9(1) that the plan, programme or modification, as the case may be, is likely to have significant environmental effects, or it is the subject of a direction under regulation 10(3).

Environmental assessment of plans and programmes: first formal preparatory act on or before 21 July 2004

6. - (1) Subject to paragraph (2) and regulation 7, where -

(a) a plan or programme of which the first formal preparatory act occurs on or before 21 July 2004 has not been adopted or submitted to the legislative procedure for adoption before 22 July 2006; and

(b) the plan or programme is such that, had the first act in its preparation occurred after 21 July 2004, the plan or programme would have required an environmental assessment by virtue of regulation 5(1); or

(c) the responsible authority is of the opinion that, if a determination under regulation 9(1) in respect of the plan or programme had been made after 21 July 2004, it would have determined that the plan or programme was likely to have significant environmental effects,

the responsible authority must carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure for adoption.

(2) Nothing in paragraph (1) requires the environmental assessment of a particular plan or programme if the responsible authority -

(a) decides that such assessment is not feasible; and

(b) informs the public of its decision.

Environmental assessment of plans and programmes co-financed by the European Community

7. The environmental assessment required by any provision of this Part for a plan or programme co-financed by the European Community must be carried out by the responsible authority in conformity with the specific provisions in relevant Community legislation.

Restriction on adoption or submission of plans, programmes or modifications

8. - (1) A plan, programme or modification in respect of which a determination under regulation 9(1) is required is not to be adopted or submitted to the legislative procedure for the purpose of its adoption -

(a) where an environmental assessment is required in consequence of the determination, or of a direction under regulation 10(3), before the requirements of paragraph (3) below have been met;

(b) in any other case, before the determination has been made under regulation 9(1).

(2) A plan or programme for which an environmental assessment is required by any provision of this Part is not to be adopted or submitted to the legislative procedure for the purposes of its adoption before -

(a) if it is a plan or programme co-financed by the European Community, the environmental assessment has been carried out as mentioned in regulation 7;

(b) in any other case, the requirements of paragraph (3) below, and such requirements of Part 3 as apply in relation to the plan or programme, have been met.

(3) This paragraph requires account to be taken of -

(a) the environmental report for the plan or programme;

(b) every opinion expressed in response to the invitations referred to in regulation 13(2)(d);

(c) every opinion expressed in response to action taken by the responsible authority in accordance with regulation 13(4); and

(d) the outcome of any consultations commenced under regulation 14.

Determinations of the responsible authority

9. - (1) The responsible authority must determine whether or not a plan, programme or modification of a description referred to in -

(a) paragraph (4)(a) and (b) of regulation 5;

(b) paragraph (6)(a) of that regulation; or

(c) paragraph (6)(b) of that regulation,

is likely to have significant environmental effects.

(2) Before making a determination under paragraph (1), the responsible authority must -

(a) take into account the criteria specified in Schedule 1; and

(b) consult the consultation bodies.

(3) Where the responsible authority determines that the plan, programme or modification is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment), it must prepare a statement of its reasons for such determination.

Powers of the National Assembly

10. - (1) The National Assembly may at any time before the adoption of a plan, programme or modification or its submission to the legislative procedure for the purpose of its adoption (as the case may be), in writing, require the responsible authority to send to the National Assembly a copy of -

(a) any determination under paragraph (1) of regulation 9 with respect to the plan, programme or modification;

(b) the plan, programme or modification to which the determination relates; and

(c) where paragraph (3) of that regulation applies, the statement of reasons prepared in accordance with that paragraph.

(2) The responsible authority must comply with a requirement specified under paragraph (1) within 7 days of receiving notification of it.

(3) The National Assembly may direct that a plan, programme or modification is likely to have significant environmental effects (whether or not a copy of the plan, programme or modification has been sent to it in response to a requirement under paragraph (1)).

(4) Before giving a direction, the National Assembly must -

(a) take into account the criteria specified in Schedule 1; and

(b) consult the consultation bodies.

(5) The National Assembly must, as soon as reasonably practicable after the giving of the direction, send to the responsible authority and to each consultation body -

(a) a copy of the direction; and

(b) a statement of its reasons for giving the direction.

(6) In relation to a plan, programme or modification in respect of which a direction has been given -

(a) any determination under regulation 9(1) with respect to the plan, programme or modification ceases to have effect on receipt of the direction; and

(b) if no determination has been made under regulation 9(1) with respect to the plan, programme or modification, the responsible authority ceases to be under any duty imposed by that regulation.

(7) In this regulation, "direction" means a direction under paragraph (3).

Publicity for determinations and directions

11. - (1) Within 28 days of making a determination under regulation 9(1), the responsible authority must send to each consultation body -

(a) a copy of the determination; and

(b) where it has determined that the plan or programme does not require an environmental assessment, a statement of its reasons for that decision.

(2) The responsible authority must -

(a) keep a copy of the determination, and any accompanying statement of reasons, available at its principal office for inspection by the public at all reasonable times and free of charge; and

(b) within 14 days of the making of the copy of the determination, take such steps as it considers appropriate to bring to the attention of the public -

(i) the title of the plan, programme or modification to which the determination relates;

(ii) that the responsible authority has determined that the plan, programme or modification is or, as the case may be, is not likely to have significant environmental effects and, accordingly, that an environmental assessment is or, as the case may be, is not required in respect of the plan, programme or modification; and

(iii) the address (which may include a website) at which a copy of the determination and any accompanying statement of reasons may be inspected or from which a copy may be obtained.

(3) Where the responsible authority receives a direction under regulation 10(3), it must -

- (a) keep a copy of the direction available at its principal office for inspection by the public at all reasonable times and free of charge; and
- (b) within 14 days of the receipt of such a direction, take such steps as it considers appropriate to bring to the attention of the public -
 - (i) the title of the plan, programme or modification to which the direction relates;
 - (ii) that the National Assembly has directed that the plan, programme or modification is likely to have significant environmental effects and, accordingly, that an environmental assessment is required in respect of the plan, programme or modification; and
 - (iii) the address (which may include a website) at which the National Assembly's direction (and statement of its reasons for giving the direction) may be inspected or from which a copy may be obtained.

(4) Nothing in paragraph (2)(b)(iii) or (3)(b)(iii) requires the responsible authority to provide a copy of the documents concerned free of charge; but, where a charge is made, it must be of a reasonable amount.

PART 3

ENVIRONMENTAL REPORTS AND CONSULTATION PROCEDURES

Preparation of environmental report

12. - (1) Where an environmental assessment is required by any provision of Part 2, the responsible authority must prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.

(2) The report must identify, describe and evaluate the likely significant effects on the environment of -

- (a) implementing the plan or programme; and
- (b) reasonable alternatives, taking into account the objectives and the geographical scope of the plan or programme.

(3) The report must include such of the information referred to in Schedule 2 as may reasonably be required, taking account of -

- (a) current knowledge and methods of assessment;
- (b) the contents and level of detail in the plan or programme;
- (c) the status of the plan or programme in the decision-making process; and

(d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

(4) Information referred to in Schedule 2 may be provided by reference to relevant information obtained at other levels of decision-making or through other Community legislation.

(5) When deciding on the scope and level of detail of the information that must be included in the report, the responsible authority must consult the consultation bodies.

(6) Where a consultation body wishes to respond to a consultation under paragraph (5), it must do so within the period of 5 weeks beginning with the date on which the consultation begins.

Consultation procedures

13. - (1) Every draft plan or programme for which an environmental report has been prepared in accordance with regulation 12, and any such report so prepared, must be made available in accordance with the following provisions of this regulation; such documents being referred to in this regulation as "the relevant documents".

(2) As soon as reasonably practicable after the preparation of the relevant documents, the responsible authority must -

(a) send a copy of those documents to each consultation body;

(b) take such steps as it considers appropriate to bring the preparation of the relevant documents to the attention of the persons who, in the authority's opinion, are affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan or programme concerned, required under the Environmental Assessment of Plans and Programmes Directive ("the public consultees");

(c) inform the consultation bodies and the public consultees of the address (which may include a website) at which a copy of the relevant documents may be viewed, or from which a copy may be obtained; and

(d) invite the consultation bodies and the public consultees to express their opinion on the relevant documents, specifying the address to which, and the period within which, opinions must be sent.

(3) The period referred to in paragraph (2)(d) must be -

(a) not less than 28 days; and

(b) of such length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion on the relevant documents.

(4) The responsible authority must keep a copy of the relevant documents available at its principal office for inspection by the public at all reasonable times and free of charge.

(5) Nothing in paragraph (2)(c) requires the responsible authority to provide copies free of charge; but, where a charge is made, it must be of a reasonable amount.

Transboundary consultations

14. - (1) Where a responsible authority, other than the National Assembly, is of the opinion that a plan or programme for which it is the responsible authority is likely to have significant effects on the environment of another Member State, it must, as soon as reasonably practicable after forming that opinion -

(a) notify the National Assembly of its opinion and of the reasons for it; and

(b) supply the National Assembly with a copy of the plan or programme concerned and of the accompanying environmental report.

(2) Where the National Assembly has been notified under paragraph (1)(a), the responsible authority must, within such period as the National Assembly may specify by notice in writing to the authority (such period being not less than 21 days), provide the National Assembly with such other information about the plan or programme, or its accompanying environmental report, as it may reasonably require.

(3) Paragraph (4) applies where -

(a) the National Assembly, whether in consequence of a notice under paragraph (1)(a) or otherwise, considers that the implementation of a plan or programme is likely to have significant effects on the environment of another Member State; or

(b) a Member State that is likely to be significantly affected by the implementation of such a plan or programme requests the documents specified in paragraph (4)(a).

(4) Where this paragraph applies, the National Assembly must -

(a) forward a copy of the plan or programme, and of its accompanying environmental report, to the Secretary of State;

(b) notify the responsible authority that paragraph (3)(a) or (b) applies, as the case may be; and

(c) direct the responsible authority that it must not adopt, or submit to the legislative procedure for adoption, the plan or programme until the consultation exercise has been concluded.

Plans and programmes of other Member States

15. Where the National Assembly receives from a Member State (whether or not in response to a request made by the United Kingdom in that behalf under the Environmental Assessment of Plans and Programmes Directive) a copy of a draft plan or programme -

(a) that is being prepared in relation to any part of that Member State; and

(b) whose implementation is likely to have significant effects on the environment of any part of the United Kingdom,

the National Assembly must forward any information it receives to the Secretary of State.

PART 4

POST-ADOPTION PROCEDURES

Information as to adoption of plan or programme

16. - (1) As soon as reasonably practicable after the adoption of a plan or programme for which an environmental assessment has been carried out under these Regulations, the responsible authority must -

(a) make a copy of the plan or programme and its accompanying environmental report available at its principal office for inspection by the public at all reasonable times and free of charge; and

(b) take such steps as it considers appropriate to bring to the attention of the public -

(i) the title of the plan or programme;

(ii) the date on which it was adopted;

(iii) the address (which may include a website) at which a copy of it and of its accompanying environmental report, and of a statement containing the particulars specified in paragraph (4), may be viewed or from which a copy may be obtained;

(iv) the times at which inspection may be made; and

(v) that inspection may be made free of charge.

(2) As soon as reasonably practicable after the adoption of a plan or programme -

(a) the responsible authority must inform -

(i) the consultation bodies;

(ii) the persons who, in relation to the plan or programme, were

public consultees for the purposes of regulation 13; and

(iii) where the responsible body is not the National Assembly, the National Assembly; and

(b) the National Assembly must inform the Secretary of State,

of the matters referred to in paragraph (3).

(3) The matters are -

(a) that the plan or programme has been adopted;

(b) the date on which it was adopted; and

(c) the address (which may include a website) at which a copy of -

(i) the plan or programme, as adopted;

(ii) its accompanying environmental report; and

(iii) a statement containing the particulars specified in paragraph (4),

may be viewed, or from which a copy may be obtained.

(4) The particulars referred to in paragraphs (1)(b)(iii) and (3)(c)(iii) are -

(a) how environmental considerations have been integrated into the plan or programme;

(b) how the environmental report has been taken into account;

(c) how opinions expressed in response to -

(i) the invitation in regulation 13(2)(d);

(ii) action taken by the responsible authority in accordance with regulation 13(4),

have been taken into account;

(d) how the results of any consultations entered into under regulation 14 have been taken into account;

(e) the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with; and

(f) the measures that are to be taken to monitor the significant environmental effects of the implementation of the plan or programme.

Monitoring of implementation of plans and programmes

17. - (1) The responsible authority must monitor the significant environmental effects of the implementation of each plan or programme with the purpose of identifying unforeseen adverse effects at an early stage and being able to undertake appropriate remedial action.

(2) The responsible authority's monitoring arrangements may comprise or include arrangements established otherwise than for the express purpose of complying with paragraph (1).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998[7]

D. Elis-Thomas

The Presiding Officer of the National Assembly

29 June 2004

SCHEDULE 1

Regulations 9(2)(a) and 10(4)(a)

CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

1. The characteristics of plans and programmes, having regard, in particular, to -

- (a) the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources;
- (b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy;
- (c) the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development;
- (d) environmental problems relevant to the plan or programme; and
- (e) the relevance of the plan or programme for the implementation of Community legislation on the environment.

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to the -

- (a) probability, duration, frequency and reversibility of the effects;

- (b) cumulative nature of the effects;
- (c) transboundary nature of the effects;
- (d) risks to human health or the environment;
- (e) magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);
- (f) value and vulnerability of the area likely to be affected due to -
 - (i) special natural characteristics or cultural heritage;
 - (ii) exceeded environmental quality standards or limit values; or
 - (iii) intensive land-use; and
- (g) effects on areas or landscapes which have a recognised national, Community or international protection status.

SCHEDULE 2

Regulation 12(3)

INFORMATION FOR ENVIRONMENTAL REPORTS

1. An outline of the contents and main objectives of the plan or programme, and of its relationship (if any) with other relevant plans and programmes.
2. The relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme.
3. The environmental characteristics of areas likely to be significantly affected.
4. Any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Council Directive 79/409/EEC on the conservation of wild birds^[8] and the Habitats Directive.
5. The environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation.
6. The likely significant effects on the environment, including short, medium and long-term effects, permanent and temporary effects, positive and negative effects, and secondary, cumulative and synergistic effects, on issues including -

- (a) biodiversity;
- (b) population;
- (c) human health;
- (d) fauna;
- (e) flora;
- (f) soil;
- (g) water;
- (h) air;
- (i) climatic factors;
- (j) material assets;
- (k) cultural heritage, including architectural and archaeological heritage;
- (l) landscape; and
- (m) the inter-relationship between the issues referred to in sub-paragraphs (a) to (l).

7. The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.
8. An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties encountered in compiling the required information.
9. A description of the measures envisaged concerning monitoring in accordance with regulation 17.
10. A non-technical summary of the information provided under paragraphs 1 to 9.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2001/42/EC of the European Parliament and Council on the assessment of the effects of certain plans and programmes on the environment ("the Directive") as regards plans and programmes relating solely to Wales.

The Directive is implemented, in respect of plans and programmes which relate both to Wales and another part of the United Kingdom, by the Environmental Assessment of Plans and Programmes Regulations 2004.

The Directive and, accordingly, these Regulations, do not apply to plans and programmes whose sole purpose relates to national defence or civil emergency, or to financial or budget plans and programmes. Nor do they apply to a plan or programme co-financed by the European Community under the 2000-2006 programming period for Council Regulation (EC) No. 1260/1999 or the 2000-2006 or 2000-2007 programming period for Council Regulation (EC) No. 1257/1999 (Article 3.8 and 3.9 of the Directive and regulation 5(5) of these Regulations).

These Regulations apply to certain plans and programmes, including those co-financed by the European Community, and any modifications to them, which are required by legislative, regulatory or administrative provisions and are either -

- (a) subject to preparation and/or adoption by an authority at national, regional or local level; or
- (b) prepared by an authority for adoption, through a legislative procedure by Parliament or Government.

Subject to the exceptions mentioned below, where the first formal preparatory act in relation to a plan or programme to which these Regulations apply occurs after 21 July 2004, the plan or programme cannot be adopted, or submitted for adoption, unless it has been subjected to environmental assessment under these Regulations (Articles 4.1 and 13.3 of the Directive and regulations 5(1) and 7 of these Regulations).

The requirement for environmental assessment applies, in particular, to any plan or programme prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, which sets the framework for future development consent of projects listed in Annex I or II to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC; and to any plan or programme which, in view of the likely effect on sites, has been determined to require an assessment pursuant to Article 6 or 7 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna, as last amended by Council Directive 97/11/EC (Article 3.2 of the Directive and regulation 5(1) to (3) of these Regulations).

There are exceptions for plans and programmes that determine the use of a small area at local level, and for minor modifications, if the authority responsible for preparing the plan or programme (referred to in these Regulations as the "responsible authority") has determined under regulation 9(1) of these Regulations that they are unlikely to have significant environmental effects (Article 3.3 and regulation 5(6) of these Regulations). The responsible authority's determination may, however, cease to have effect if the National Assembly gives a direction under regulation 10(3).

The requirement for environmental assessment also applies to other plans and programmes which set the framework for future development consent of projects if they are the subject of a determination under regulation 9(1) that the plan or programme is likely to have significant environmental effects (Article 3.4 of the Directive and regulation 5(4) of these Regulations). The responsible authority's determination may, however, cease to have effect if the National

Assembly gives a direction under regulation 10(3).

The requirement for environmental assessment under these Regulations also applies where a plan or programme in relation to which the first formal preparatory act occurred before 21 July 2004 has not been adopted, or submitted for adoption, before 22 July 2006. If an environmental assessment would have been required if the first formal preparatory act had occurred after 21 July 2004, the plan or programme must be subjected to environmental assessment unless the National Assembly directs that that is not feasible and informs the public to that effect (Articles 4.1 and 13.3 of the Directive and regulation 6 of these Regulations).

Regulation 7 makes provision for environmental assessment of plans and programmes co-financed by the European Community (other than those excepted by Article 3.9 of the Directive) to be carried out in conformity with the specific provisions in relevant Community legislation (Article 11.3 of the Directive).

Regulation 8 prevents the adoption, or submission for adoption, of a plan or programme for which an environmental assessment is required under these Regulations, before the completion of that assessment. An environmental assessment is not complete until account has been taken of the environmental report for that plan or programme, the opinions expressed in the course of the required consultations and the outcome of any transboundary consultations (Article 8 of the Directive). Regulation 8 also prevents the adoption, or submission for adoption, of a plan or programme while the National Assembly is considering whether the plan or programme is likely to have significant environmental effects.

Regulation 9 deals with the making of determinations by the relevant authority as to whether a plan or programme is likely to have significant environmental effects. The criteria to be applied are set out in Schedule 1 to these Regulations (Article 3.5 of, and Annex II to, the Directive). Determinations cannot be made unless the relevant authority has consulted designated bodies ("the consultation bodies"). The designation of the consultation bodies is dealt with in regulation 4 (Article 6.3 of the Directive). In the case of every plan and programme to which these Regulations apply the consultation bodies will consist of, or include, the Countryside Council for Wales, Cadw and the Environment Agency.

Regulation 10 enables the National Assembly to require a responsible authority to provide it with relevant documents. It also enables it to direct that a particular plan or programme is likely to have significant environmental effects. In the latter case, any determination to the contrary made under regulation 9(1) of these Regulations by a responsible authority ceases to have effect. If a responsible authority has not made any determination under that provision, the National Assembly's direction relieves it of the duty to do so.

Regulation 11 requires the publication of determinations under regulation 9 (Article 3.7 of the Directive) and directions under regulation 10.

Environmental assessment under these Regulations includes the preparation of an environmental report (Article 5 of the Directive and regulation 12 of these Regulations). The matters to be included in the environmental report are specified in Schedule 2 to these Regulations (Article 5.1 of, and Annex II to, the Directive).

Regulation 13 specifies the consultation procedures that must be undertaken in relation to a draft plan or programme for which an environmental report has been prepared under these Regulations (Articles 5.4 and 6 of the Directive).

Regulations 14 and 15 deal with transboundary consultations and include procedures for consultations in relation to those draft plans and programmes prepared in Wales that are likely to have significant effects on the environment in other Member States (Article 7 of the Directive).

Regulation 16 deals with procedures after the adoption of a plan or programme that has been the subject of an environmental assessment under the Regulations. It requires the person who prepared the plan or programme to give notice of its adoption and to make it and other specified information available for inspection (Article 9 of the Directive).

Regulation 17 relates to the monitoring of the significant environmental effects of implementing plans and programmes (Article 10 of the Directive). It requires the person by whom the plan or programme was prepared to monitor with a view to identifying, at an early stage, unforeseen adverse effects, and being able to undertake appropriate remedial action.

Notes:

[1] S.I. 2004/706.[back](#)

[2] 1972 c.68.[back](#)

[3] O.J. No. L 197, 21.07.2001, p.30.[back](#)

[4] O.J. No. L 206, 22.7.1992. The latest amending Directive is at O.J. No. L 305, 8.11.1997, p.42.[back](#)

[5] 1998 c.38. See article 6 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).[back](#)

[6] O.J. No. L 175, 5.7.1985, p.40. The amending Directive is at O.J. L73, 14.3.1997, p.5.[back](#)

[7] 1998 c.38.[back](#)

[8] O.J. No. L 103/1 25.4.79.[back](#)

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ISBN 0 11090964 X

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